

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

KEYSTON JAMORY WEST,

Petitioner,

v.

**CIVIL ACTION NO. 3:05-CV-103
CRIMINAL ACTION NO. 3:00-CR-6 and 46
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED AND STRICKEN FROM DOCKET**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. On October 24, 2005, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R") [Civ. Doc. 4]. Magistrate Judge Seibert filed his R & R on October 30, 2007 [Civ. Doc. 10]. In that filing, the magistrate judge recommended that this Court deny and dismiss the *pro se* plaintiff's complaint filed under 28 U.S.C. § 2255 [Civ. Doc. 1] and deny his request for an evidentiary hearing.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

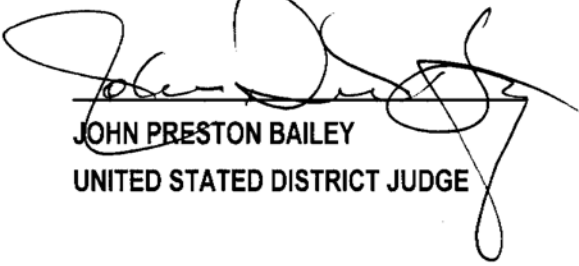
150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten days of receiving the R & R [Civ. Doc. 10], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The record reflects that service was accepted on November 2, 2007 [Civ. Doc. 11]. Accordingly, objections were due on or before November 12, 2007. To date, no objections to the R & R have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Civ. Doc. 10 / 3:00CR6 Crim. Doc. 497 / 3:00CR46 Crim. Doc. 149] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court hereby **DENIES** the 2255 petition [Civ. Doc. 1 / 3:00CR6 Crim. Doc. 472 / 3:00CR46 Crim. Doc. 136]. Accordingly, the Court hereby **DIRECTS** the Clerk to **DISMISS** petitioner's Motion to Vacate [Civ. Doc. 1 / Crim. Doc. 472 / Crim. Doc. 136] and to **STRIKE** it from the active dockets of this Court. Additionally, the petitioner's request for an evidentiary hearing is **DENIED**. As a final matter, petitioner's motion for leave to file excess pages [Civ. Doc. 2 / Crim. Doc. 473 / Crim. Doc. 137] is hereby **DENIED as moot**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a certified copy to the *pro se* petitioner.

DATED: November 14, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE